

Superior Court Standing Order 6-20

Updated Protocol Governing Superior Court Operations During the Coronavirus (COVID-19) Pandemic

Applicable to All Courts

Pursuant to the Supreme Judicial Court's order dated April 27, 2020, effective May 4, 2020 (SJC–May 4 Order), the Superior Court issues this standing order to update protocols governing court operations during the Coronavirus (COVID-19) pandemic. This standing order is effective May 4, 2020, and rescinds and supersedes Standing Order 4-20, issued April 1, 2020. This standing order will remain in effect until further order of the Court.

I. In-person emergency matters

- A. Until at least June 1, 2020, the Superior Court will remain open to conduct court business, but courthouses will be closed to the general public except where entry is required to address an emergency matter that cannot be resolved virtually (i.e., by telephone, videoconference, email, or comparable means, or through the electronic filing system) because it is not practicable or would be inconsistent with the protection of constitutional rights.
- B. In-person emergency matters in Superior Court are:
 - 1. Proceedings under G. L. c. 112, § 12S ("Mary Moe" petitions). These proceedings may be conducted by telephone or other means on request of counsel for the minor if a judge determines that such method is necessary in the circumstances.
 - 2. Wiretap warrants.
 - 3. Any other matter which a judge, after consultation with the Clerk, the parties, Security, and Probation (if applicable), determines requires an in-person proceeding because it cannot be resolved virtually because it is not practicable or would be inconsistent with the protection of constitutional rights.
- C. In-person appearances are limited to the following persons, provided they are not prohibited from entering the courthouse by the Supreme Judicial Court's Order Regarding Access To State Courthouses & Court Facilities, dated March 13, 2020:
 - 1. attorneys
 - 2. parties
 - 3. witnesses
 - 4. other necessary persons as determined by the judge presiding over the proceeding
 - 5. no more than three members of the "news media," as defined in Supreme Judicial Court Rule 1:19(2), although no such member may attend a Mary Moe hearing.
- D. Anyone seeking to arrange an in-person hearing should call the relevant Clerk's Office. See telephone numbers provided in the addendum.

- E. If a judge determines that a proceeding must be conducted in person, and the courthouse where the Superior Court sits in the County in which the matter is pending is closed because of actual or suspected infection of courthouse personnel, the Regional Administrative Justice (RAJ), in consultation with the Clerk and with the relevant RAJ of another county or region or First Justice of another Trial Court department, may make arrangements to conduct the hearing in another courthouse.
- F. As provided in SJC –May 4 Order, par. 5, in cases where a judge has ordered electronic monitoring by GPS or remote alcohol monitoring, or in cases where, under an earlier court order, previously installed electronic monitoring equipment requires maintenance or removal, all installations, maintenance, or removals of such equipment may occur in the courthouse to ensure security and access to personal protective equipment by probation personnel.

II. Emergency and other time sensitive matters held virtually, unless otherwise ordered

- A. The following matters shall be held as promptly as possible, and presumptively shall be held by videoconference or telephone, subject to additional provisions made here, or unless a judge, after consultation with the Clerk, the parties, Security, and Probation (if necessary), finds that the matter cannot be resolved through a videoconference or telephonic hearing, either because such a hearing is not practicable or because it would be inconsistent with the protection of constitutional rights. Any in-person hearing ordered under this Part II shall be limited to persons identified in Part I(C) above.
 - 1. bail reviews
 - 2. bail determinations following arrest or surrender pursuant to a Superior Court warrant
 - 3. dangerousness hearings under G. L. c. 276, § 58A
 - i. Any order of detention under § 58A after a hearing by videoconference or telephone shall be without prejudice to the defendant's right to an in-person hearing to be held when feasible
 - 4. probable cause hearings for sexual dangerousness under G. L. c. 123A, § 12
 - i. Any finding of probable cause made after a hearing by videoconference or telephone shall be without prejudice to the respondent's right to an in-person hearing to be held when feasible
 - 5. hearings on returns in matters under G. L. c. 209A or G. L. c. 258E
 - i. Following any ex parte order, the ten-day hearing shall be conducted by telephone, subject to further hearing in person when feasible
 - 6. actions concerning compelled isolation or quarantine pursuant to Superior Court Administrative Directive 20-1 (Protocol Governing Actions to Enforce Isolation or Quarantine Orders)
 - 7. requests for temporary restraining orders.
- B. Promptly upon receipt of any motion seeking funds for expenses necessary to establish medical parole eligibility for a person serving a committed sentence, or to put in place a release plan for such a person or for a person held pending trial or pending a final hearing on a probation violation, the Clerk shall bring such motion to the attention of the RAJ, or of any judge designated by the RAJ. The RAJ or designated judge may allow any such motion on the

papers, or may direct the prompt scheduling of a hearing by video or telephone. See *CPCS v. CJTC (No. 2)* (SJC-12926) (Apr. 28, 2020), slip op. at 6.

III. Other Court business

The Court will address non-emergency matters in both civil and criminal cases to the extent feasible with available staffing. In civil cases, such matters will include processing and ruling on motions submitted under Superior Court Rule 9A, Rule 16 conferences, final pre-trial conferences, status conferences, and hearings on non-evidentiary motions. In Criminal cases, such matters will include conferences, hearings on non-evidentiary motions, arraignments if defendant waives physical presence, and agreed pleas if defendant waives physical presence and the judge finds that defendant is able to and does make a knowing and voluntary waiver of rights including the right to physical presence. All such conferences and hearings, both civil and criminal, will be conducted by video or telephone, with arrangements made for virtual public access on request. Members of the public seeking such access shall so request by contacting the clerk.

IV. Clerks' Offices

- A. All Superior Court Clerks' Offices shall continue to conduct court business as follows:
 - 1. accept emergency filings by email, docket them as promptly as possible consistent with limited staffing, and bring them to the attention of the RAJ or a judge designated by the RAJ;
 - 2. in those counties that have efilings, process filings received by efilings as promptly as possible consistent with limited staffing;
 - 3. accept all filings received by mail and docket them as promptly as possible consistent with limited staffing;
 - 4. in counties that do not yet have efilings, Clerks' Offices may accept non-emergency filings by email in the discretion of the Clerk;
 - 5. Clerks shall also continue to schedule and facilitate hearings; issue orders; answer questions from attorneys, litigants, and the general public; and conduct other necessary business of the court.
- B. Clerks' office personnel shall follow the policies and guidance provided by the Department of Human Resources in the Office of Court Management. If illness or exposure to the virus of personnel in any Clerk's office affects availability of personnel to the extent that a Clerk's office lacks sufficient personnel to continue operations, including remote operations, the Clerk and AOSC will consult with other clerks to arrange assistance for the affected office.

V. Trials, hearings, and other court activities

- A. Jury and bench trials continued. As provided in SJC–May 4 Order, par. 6, all jury trials, in both criminal and civil cases, scheduled to commence between March 13, 2020, and July 1, 2020, are continued to a date no earlier than July 1, 2020. Bench trials, criminal and civil, scheduled to commence between March 13, 2020, and June 1, 2020, are continued to a date no earlier than June 1, 2020. Pursuant to SJC–May 4 Order, par. 9, time periods of continuances

occasioned by any of the SJC's Orders, effective March 13 or 17, or April 6 (prior SJC Orders) shall be excluded from speedy trial computations under Mass. R. Crim. P. 36. Except for emergency and time-sensitive matters described in parts I and II hereof, all evidentiary hearings, both criminal and civil, are continued to a date no earlier than June 1, 2020. Clerk's offices will contact counsel or self-represented parties regarding rescheduling, as promptly as feasible with limited staffing.

- B. Applying for exception to postponement of trial or evidentiary hearing. As provided in SJC– May 4 Order, par. 7, upon a showing of exceptional circumstances, a party who has had a trial or evidentiary hearing postponed as a result of the SJC-May 4 Order, or a prior SJC Order, may apply for an exception from the postponement by motion. In civil cases any such motions shall comply with Superior Court Rule 9A. No exception shall be granted except with the approval of the judge and the Chief Justice of the Superior Court, and in no event shall a jury empanelment or jury trial occur during this time period due to the inherent risk involved in doing so.
- C. Requesting conference to address postponed trial or evidentiary hearing. As provided in SJC– May 4 Order, par. 8, a party who has had a trial or evidentiary hearing postponed as a result of the SJC-May 4 Order, or a prior SJC Order, may contact the Clerk to request a conference with the judge to address matters arising from the postponement. Any such conference shall be conducted virtually, and may be conducted by the session judge, by the Regional Administrative Justice (RAJ) or designee, or by the Clerk or assistant clerk with the approval of the session judge or RAJ. Persons in custody shall not be transported for such conferences.
- D. Bail or conditions of release. As provided in SJC– May 4 Order, par. 8, in criminal cases, where a trial or evidentiary hearing has been postponed as a result of the SJC-May 4 Order, a defendant may seek reconsideration of bail or conditions of release. Hearings on such requests may be conducted by videoconference or telephone where feasible. Persons in custody shall not be transported for such hearings.
- E. Grand juries. As provided in SJC–May 4 Order, par. 10, no new grand jury shall be empaneled before July 6, 2020. Grand juries whose terms expire before the empanelment of a new grand jury shall be extended until the date of that new empanelment. The prosecutor may call in a sitting grand jury only with the approval of the RAJ.
- F. Statutes of limitation. As provided in SJC–May 4 Order, par. 11, all statutes of limitation are tolled from March 17, 2020, through May 31, 2020.
- G. Tolling of deadlines set by statute, court rule, standing order, or guideline. As provided in SJC– May 4 Order, par. 12, unless otherwise ordered by a judge, all deadlines set forth in statutes or court rules, including M. R. Crim. P. 29, standing orders, tracking orders, or guidelines, that expired or will expire between March 16, 2020, and June 1, 2020, are tolled until June 1, 2020. The new deadline in each instance is calculated as follows: determine how many days remained after March 16, 2020, until the original deadline, and that same number of days will remain as of June 1, 2020, until the new deadline. For example, if a rule set a thirty (30) day deadline and twelve (12) days remained after March 16 before that deadline was reached,

then twelve (12) days will continue to remain as of June 1, before the new deadline is reached (i.e., June 15, because June 13 is a Saturday). If the thirty (30) day period commenced after March 16, then thirty (30) days remain as of June 1 before the new deadline is reached (i.e., July 1).

- H. Tolling of court-ordered deadlines in particular cases. As provided in SJC–May 4 Order, par. 13, unless otherwise specifically ordered by the Court, all deadlines established by the Court in a particular case on or before March 16, 2020 that expire between March 16 and June 1, 2020, are tolled until June 1, 2020. To calculate the new deadline, see the guidance in paragraph G above. Expiring probation termination dates are not tolled by this provision.
- I. Expiring injunctions and similar orders. As provided in SJC–May 4 Order, par. 14, unless otherwise ordered by the Court, all orders in particular cases that were issued before March 17, 2020, after an adversarial hearing (or the opportunity for an adversarial hearing), that enjoined or otherwise restrained or prohibited a party from taking some act or engaging in some conduct until a date between March 16, 2020, and June 1, 2020, shall remain in effect until the matter is rescheduled and heard.
- J. Video and telephone equipment. Each RAJ shall advise Deputy Court Administrator (DCA) Elaina Quinn regarding any deficiency in equipment necessary to conduct proceedings by video or telephone. DCA Quinn shall work with the appropriate personnel in the Office of Court Management to address any such deficiency as promptly as possible.
- K. Administrative Office of the Superior Court (AOSC). The AOSC shall remain open with skeleton staff and through remote operations. AOSC staff shall follow the policies and guidance provided by the Department of Human Resources in the Office of Court Management. AOSC will remain open for accepting returns of wiretap warrants.

So Ordered,

/s/ Judith Fabricant

Judith Fabricant
Chief Justice of the Superior Court

Adopted: April 29, 2020
Effective: **May 4, 2020**

Addendum to Superior Court Standing Order 6-20

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| Barnstable County Superior Court | (508) 375-6684 | |
| Berkshire County Superior Court | (413) 442-9190 | |
| Bristol County Superior Court | (508) 491-3300 (508) 996-2051 (508) 823-6588 | Fall River New Bedford Taunton |
| Dukes County Superior Court | (508) 627-4668 | |
| Essex County Superior Court | (978) 825-4800 (978) 242-1900 (978) 462-4474 | Salem Lawrence Newburyport |
| Franklin County Superior Court | (413) 775-7400 | |
| Hampden County Superior Court | (413) 735-6016 | |
| Hampshire County Superior Court | (413) 584-5810 | |
| Middlesex County Superior Court | (781) 939-2700 (978) 656-7800 | Woburn Lowell |
| Nantucket County Superior Court | (508) 228-2559 | |
| Norfolk County Superior Court | (781) 326-1600 | |
| Plymouth County Superior Court | (508) 747-8400 (508) 583-8250 | Plymouth Brockton |
| Suffolk Civil Superior Court | (617) 788-8175 | |
| Suffolk Criminal Superior Court | (617) 788-8160 | |
| Worcester County Superior Court | (508) 831-2000 | |